

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>CARLOS A. AGUIAR,</b>	)	
<b>Plaintiff</b>	)	
<b>VS.</b>	)	<b>Civil Action</b>
	)	<b>No. 04-12011-MLW</b>
<b>LIMA &amp; CURA FISHING</b>	)	
<b>CORPORATION,</b>	)	
<b>Defendant</b>	)	

**PLAINTIFF'S ASSENTED TO MOTION TO CANCEL OR CONTINUE  
THE SCHEDULING CONFERENCE AND MOTION FOR EXTENSION OF TIME TO  
RESPOND TO THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, and states as follows:

1. The Court has scheduled a Scheduling Conference on November 17, 2005. Pursuant to the Court's Scheduling Order, this conference is to address the issue of settlement and to establish a schedule for filing motions for summary judgment. A Pretrial Conference is scheduled for December 1, 2005.
2. The Plaintiff's counsel, David F. Anderson, Esq., is currently on trial in federal court in Bangor, Maine, in the matter of Falconer v. Penn Maritime, Inc., et. al., C.A. 05-cv-42. This is a Jones Act case involving a paraplegic. The trial started yesterday, November 1, 2005, and is expected to last until at least Thanksgiving. This motion has been prepared and filed in Mr. Anderson's absence by David J. Berg, Esq., of Latti & Anderson, LLP. Mr. Berg has not previously performed any legal work on this case, and is stepping in only in Mr. Anderson's absence. Mr. Anderson will be handling the trial of this matter.
3. Mr. Berg would otherwise have planned to attend the Scheduling Conference in Mr. Anderson's absence, but has long established plans to be out of the country at a wedding from November 17, 2005 to November 21, 2005. As Attorney Carolyn Latti of this office is on trial in

the Falconer case with Mr. Anderson, Latti & Anderson has no attorneys who will be available to attend the Scheduling Conference on November 17.

4. It should additionally be noted that the Defendant has scheduled an IME for the Plaintiff on November 16 and a vocational examination on November 28. Both of these were scheduled by agreement of the parties.

5. Given the timing of these 2 examinations, the Defendant will not be in a position to discuss the potential settlement of this case until the time of the pretrial conference on December 1, 2005. Please consider this paragraph as compliance with the parties' obligation to report to the Court regarding settlement, as set forth in the Scheduling Order.

6. Accordingly, the parties request that the Scheduling Conference be cancelled in the interests of judicial economy. If, however, the Court desires the conference to be held at some time prior to the Pretrial Conference, the Plaintiff requests that it be rescheduled to some day after November 21, 2005.

7. The Defendant has this day filed a motion for summary judgment. The Plaintiff is unable to effectively respond to this motion in the absence of Mr. Anderson, the Plaintiff's attorney of record. Mr. Berg does not believe that he can or should be required to respond to a dispositive motion in the absence of the Plaintiff's attorney of record.

8. The Plaintiff therefore requests an extension of time to respond to the Defendant's motion for summary judgment. Under the Local Rules, oppositions to motions are due 14 days after the filing of the motion. The Plaintiff requests an extension of time to December 12, 2005 to respond to the motion. That will allow Mr. Anderson 14 days to respond to the motion from the end of the long Thanksgiving weekend.

9. The Defendant assents to this motion.

WHEREFORE, the Plaintiff respectfully requests that:

- A. The Scheduling Conference on November 17, 2005 be either cancelled or continued to some day after November 21, 2005; and
- B. The Plaintiff be granted an extension of time to December 12, 2005 to respond to the Defendant's motion for summary judgment.

Carlos Aguiar, Plaintiff,  
by his attorney,

/s/ David F. Anderson, Esq.  
David F. Anderson, BBO #560994  
Latti & Anderson LLP  
30-31 Union Wharf  
Boston, MA 02109  
(617) 523-1000

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

/s/ David F. Anderson, Esq.  
David F. Anderson, Esq.  
Latti & Anderson LLP  
30-31 Union Wharf  
Boston, MA 02109  
617-523-1000

Dated: November 2, 2005